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# HAITI: INVESTMENT OPPORTUNITIES FOR THE U.S. MANUFACTURER

RODNEY NICOLAS LAHAM\*

## INTRODUCTION

Not so many years ago, a U.S. company could conduct its international business much as it would in opening a branch operation within the United States. Today however, the attitude of local governments toward foreign investments has to be carefully reviewed along with the traditional business considerations.

To make a business decision concerning an overseas investment, it has become necessary to consider and apply certain basic factors to each and every country where an investment is intended. Some of these factors, both financial and political, can be summarized as follows:

- (1) Government policy towards private and foreign investments, and the role of these investments in the host government's development planning and goals;
- (2) government legislation, if any, affecting entry and repatriation of capital and net profit earnings;
- (3) convertibility and stability of currency;
- (4) restrictions, if any, on total foreign ownership;
- (5) current or prospective membership in an integrated market or customs union;
- (6) treaty of friendship and establishment with the United States;
- (7) availability of U.S. sponsored incentive programs relating to financing and insurance for American investments in that country;
- (8) relative dependence of the country on its imports and exports;
- (9) proximity of manufacturing site to raw material sources and export markets;
- (10) incentives granted to new enterprises, and the types of business organizations allowed under the laws of the host country.

Although these factors, and many more, can and should be considered for any type of investment, it is my purpose, here, to apply them specifically to the light manufacturing and assembly industries in Haiti.

The international press has had very little to say about Haiti in the last twenty years. I think, therefore, that a few background notes are necessary in order to create the needed perspective.

In 1804, after a long and bitter struggle, Haiti declared its independence from France, thereby becoming the second republic in the Western Hemisphere. The country occupies the western one-third of the island of Hispaniola in the Caribbean Sea between Puerto Rico and Cuba, and is only 710 miles from Miami.

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On the death of François Duvalier in 1971, his son, Jean-Claude Duvalier, assumed the Presidency. In the intervening seven years, the Government has embarked on an aggressive development program which includes extensive highway construction, renovation and expansion of port facilities, improvements in the water distribution system, mechanization of farming, construction of an industrial park and improvements in public administration and the institutional framework.

These development programs, coupled with the incentives and allowances provided foreign investors, have created an improved setting for private United States participation in Haiti's economic development.

### ECONOMIC OUTLOOK

Prior to discussing the foreign investment laws, I believe a few words explaining the reasons for and the motivating forces behind these laws are in order. Although Haiti's population growth rate is comparatively low for the Caribbean (two percent),<sup>1</sup> the fact remains that the country has an area of only 10,714 square miles and a population of more than five million inhabitants or about 465 persons per square mile.<sup>2</sup> That population pressure has caused a continuing shift from exportable cash crops such as coffee and sugar to subsistence crops such as corn and millet. Thus, the country's basic economic dilemma is how to increase production fast enough to keep pace with population expansion. To prevent widespread suffering, the government has been forced to import increasing quantities of basic foods. These imports have almost doubled in the past few years, and have caused a yearly average trade deficit for the past four years of nearly 77 million dollars.<sup>3</sup>

That dilemma has created two distinct opportunities for the foreign manufacturer: (1) The need for foreign capital and for jobs has fostered a favorable investment climate; and (2) the acute population pressure on land resources has created an almost limitless supply of unskilled to semiskilled labor that is easily trained. The minimum wage presently stands at \$1.60 per day, but fringes and other benefits bring real average wage costs to about \$2.40 per day. As in any other Lesser Developed Country (LDC), the U.S. businessman is bound to face administrative, institutional and cultural impediments. The lack of infrastructure and services, and electric shortages are the most commonly cited of such impediments. With the help of U.S. and other international agencies, definite improvements have been made in these sectors. In making a business and policy decision, a U.S. investor must carefully weigh these disadvantages against the incentives provided.

#### *Foreign Exchange*

Haiti has an open (non-command) economy. There are no controls on foreign capital flows and foreign exchange movements.<sup>4</sup> Its domestic

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1. Haiti, Background Notes, Dept. of State Publication 8287, Revised April 1977.

2. *Id.* at 1.

3. U.S. Dept. of State, Foreign Economic Trends and Their Implications for the United States (FET No. 77-148, 1977).

4. *Supra* note 1.

currency, the gourde, has been fully convertible into dollars at the rate of five gourdes to a U.S. dollar since 1919. The stability and convertibility of the currency is backed by the International Monetary Fund. U.S. currency is freely used on the Haitian market place.

### GUARANTIES

Generally, the sources of capital can be savings, loans or foreign investments, and though loans and economic aid to Haiti have resumed<sup>5</sup> (approximately \$80 million in 1976), they are not enough to finance the government's development projects. Since Haiti possesses limited arable land and few natural resources, the Government is very receptive to foreign investments as "the" source to cover the country's financial requirements in the private sector.

Private U.S. investments were first guaranteed by an agreement effected by the exchange of notes signed in Washington on March 13 and April 2, 1953.<sup>6</sup> That agreement was renewed and modified by Note No. 271 of November 1970, and relates to guaranties and insurance which may be issued by the Government of the United States for investments in Haiti.<sup>7</sup>

There have been no expropriations of physical assets or of going concerns. In fact, foreign investments in the assembly and manufacturing industries have generally been free to operate under Haiti's legislation which provides tremendous tax and duty incentives.

The present political stability in the country is evidenced by the renewed interest which the U.S. Government — and its agencies — has shown in the past decade. The flow of private capital, both local and foreign, into the manufacturing sector of the economy has paralleled the resumption of United States and international economic assistance to the country. Insurance and financing for U.S. investments in Haiti is available from the Overseas Private Investment Corporation (OPIC), an agency of the U.S. Government.<sup>8</sup> OPIC direct loans, loan guarantees and insurance coverage have ranged from a \$300,000 loan for the expansion of a furniture manufacturer's facilities to an \$8 million water distribution system.<sup>9</sup>

### LEGAL STRUCTURE

There are various legal forms available to the foreign entrepreneur who wishes to invest/manufacture in Haiti. Basically, this involves making a choice between:

- (1) *Qualification of a branch.* A company is regarded as a foreign enterprise when its principal head office is registered in a foreign country.

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5. Economic aid received: International organizations-\$46.2 million; United States only-\$23.7 million; Western nations other than United States-\$10.1 million; AID loans-\$5.0 million; AID grants-\$4.3 million; PL-480-\$14.2 million.

6. 4 U.S.T. 1546, T.I.A.S. No. 2818.

7. 21 U.S.T. 2651, T.I.A.S. No. 7006; U.S. State Dept. Treaties in Force (1977).

8. OPIC, 1976 Annual Report, at 34, 45, 46, 48.

9. OPIC 1976 Annual Report; OPIC Country List, September 1976.

After a fairly simple procedure, requiring the translation of the charter and the bylaws, the matter is ultimately submitted to the President of the Republic who issues a decree authorizing the operation of the business. Such foreign corporation branches are required to obtain a license, but are taxed the same as a Haitian corporation.<sup>10</sup> Because of the new Latin American regional and national investment laws requiring local participation,<sup>11</sup> the branch has rapidly become a relic of the past. In Haiti, no significant local participation is required, but at least one member of the board of directors or management team must be a resident of Haiti, though not necessarily a citizen.<sup>12</sup>

- (2) *Organizing a local foreign subsidiary.* All corporations must have a domicile duly recorded. Its existence is determined by the object of the enterprise. The shareholders may be Haitians or citizens of foreign countries, and are liable only for the amount of shares subscribed.<sup>13</sup> The organizational requirements are clearly set out, and differ only slightly from Florida law.<sup>14</sup> This option seems to be the best for the investor who intends to create a wholly-owned manufacturing/assembly operation.
- (3) *Operating through a local joint venture entity.* Haitian law establishes and recognizes five basic kinds of commercial enterprises: The single entrepreneur; the full partnership; the limited co-partnership; the corporation; and a form of partnership<sup>15</sup> in which a person shares in the profits of the business although he does not have the legal status of a partner.
- (4) *Contract manufacturing of products under the foreign investor's trademarks and brand names.* This form is in essence a cross between licensing and direct investment, and can be combined with a management contract allowing the foreign businessman direction in a company without having equity control or legal responsibility. The most common provisions of the management/manufacturing contracts found in Haiti relate to: The training of management and workers; the right to designate the supervisor and/or chief engineer; the purchasing and inventory control; the output or production control; and, finally, the quality control.

This method of manufacturing in Haiti is presently the most widely used by the small to medium size foreign firms, because:

10. Civ. Code, art. 1604 *et seq.* (1934).

11. *Id.* art. 1630.

12. E.g., ANCOM, Foreign Investment Code - Decision 24. (Local investors must hold at least forty-five percent of the companies capital by the time two thirds of the agreed upon fade-out term, usually fifteen years, has elapsed).

13. Civ. Code, art. 1619 (1934).

14. *Id.* art. 1895.

15. This form could be described as a cross between a corporation and a "limited liability company," in which all the owners have limited liability but the transfer of ownership interests are somewhat restricted.

- (1) It avoids the investment approval requirements, thereby reducing costs;
- (2) it minimizes the capital investment normally required;
- (3) it reduces the cost per unit by eliminating some of the overhead and by taking advantage of a cheap labor market;
- (4) it delegates to someone else the usual labor and day-to-day problems;
- (5) it permits the investor to retain full control over marketing of the product, and finally;
- (6) it does not give rise to income immediately taxable in the United States.

One factor which should be mentioned here is that Haiti has been designated a "beneficiary developing country" under the U.S. Trade Act of 1974. This in effect means that, with the adoption of a generalized system of preferences (GSP) contained in Title V of the Act, certain exports from Haiti can enter the United States duty free. GSP presently covers over 2,700 items.

#### INVESTMENT PROMOTION LAWS OF 1960, 1963, 1969, 1974 and 1975 — DEFINITIONS<sup>16</sup>

"New Industrial Enterprise" is defined as any enterprise producing one or several articles not manufactured in Haiti on an industrial basis as of October 1949.

"Privileged Product" is defined as any article produced by a new industrial enterprise.

"Privileged Income" is defined as the income resulting from the trade of a privileged product. If the enterprise draws an income from several sources, the privileged income accruing from the privileged product is calculated by multiplying the total income of the enterprise by a fraction: the numerator being equal to the privileged product's sales turnover adjusted to the difference between the initial stock and the stock at the end of the accounting year, and the denominator being equal to the sales turnover of all the products of the enterprise adjusted to the difference between the initial stocks and the stocks at the end of the accounting year.<sup>17</sup>

#### CRITERIA FOR THE GRANTING OF PRIVILEGES<sup>18</sup>

The privileges conferred by the investment laws are granted to the following enterprises:

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16. Decree of March 1963, art. 1. (Available from the Bureau of International Commerce — U.S. Dept. of Commerce).

17. *Id.* art. 7.

18. *Id.* art. 2.

- (1) Those using local raw materials in a minimum proportion of fifty percent of the total cost of all raw materials utilized in the manufacture of the product;
- (2) those using imported raw materials in a proportion of over fifty percent of the total cost of all raw materials employed in the manufacture of the product, provided: the imported raw materials cannot be produced in Haiti without undue delay, and/or the finished product, as it concerns its local market value, is substituting for a similar product, or the finished product helps conserve national resources;
- (3) those importing materials, either in bulk or by units or parts, to be finished in Haiti, and intended to be sold locally, provided the finished article substitutes for a similar imported article;
- (4) those importing materials for finishing in Haiti and reexporting the finished product.

#### NATURE OF CUSTOM-DUTY PRIVILEGES<sup>19</sup>

Any enterprise setting up its business in the country either by contract or under the terms of these investment laws, is granted customs-duty exemptions on the following items:

- (1) All needed machinery, appliances and tools for the installation and operation of the enterprise, as well as the parts and tools needed for prospecting and research work, and the chemical products and materials needed for laboratory work and for rendering social services to the workers;
- (2) all raw materials necessary for the enterprise's productive activities when they are not available in Haiti;
- (3) trucks, rail cars, accessories and parts destined exclusively for carrying the enterprise's materials, supplies and finished products; as well as buses for the transportation of workers;
- (4) packing materials not produced or produceable in Haiti;
- (5) assembling and finishing enterprises working for export may receive free of import and export customs duties only cut-to-measure items that must be processed into finished products and re-exported.

Restriction: Existing and new industrial enterprises are restricted to a ten years exemption period on finished or semi-finished articles.<sup>20</sup>

#### NATURE OF PROPERTY & INCOME TAX PRIVILEGES

##### *Property*

- (a) When investments — movables and real estate — of the new enterprise do not exceed \$20,000, the exemption from property taxes is five years;

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19. *Id.* art. 4.

20. Decree of October 1969, art. 3.

- (b) from \$20,000 to \$100,000 inclusively, six years;
- (c) from \$100,000 to \$200,000 inclusively, seven years;
- (d) from \$200,000 to \$1,000,000 inclusively, eight years;
- (e) from \$1,000,000 to \$2,000,000 inclusively, nine years;
- (f) over \$2,000,000, ten years.

These periods extend from October 1 of the fiscal year during which the exempted enterprise starts its operations.<sup>21</sup>

### *Income*

Any enterprise that is the first to undertake the manufacture of a privileged product is granted a tax exemption of five years on the "privileged income." After the first five years, taxation is as follows:

- (a) Sixth year, fifteen percent of the Privileged Income is taxable;
- (b) seventh year, thirty percent of the Privileged Income is taxable;
- (c) eighth year, forty-five percent of the Privileged Income is taxable;
- (d) ninth year, sixty percent of the Privileged Income is taxable;
- (e) tenth year, eighty percent of the Privileged Income is taxable;
- (f) on the eleventh year the income is no longer considered "privileged."

Restrictions: Limited, and applied only to enterprises that produce for local consumption.<sup>22</sup>

In addition, an exemption from municipal license taxes and payment of alien taxes is granted to the enterprise and the entrepreneur for a period of ten years. A similar exemption is granted to both specialized workers and technicians of the enterprise for a one-year period.<sup>23</sup>

### PROCEDURE FOR APPROVAL<sup>24</sup>

A request must be submitted to the Secretary of Commerce and Industry, and must include the following information:

- (a) Capital to be invested;
- (b) location of the enterprise;
- (c) detailed list and cost of machinery, and its origins;
- (d) approximate number of employees including all eventual foreign specialists whose probable terms of services must be specified;
- (e) nature of goods to be produced and, if possible, samples;
- (f) anticipated sales markets;
- (g) complete list of raw materials with specific mention of their local or foreign origins;
- (h) tentative starting date.

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21. Decree of August 1960, art. 6.

22. *Supra* note 16, arts. 9, 10 and 11.

23. *Id.* art. 13.

24. *Id.* arts. 16-22.



The privileges and exemptions are granted by the Secretary of Commerce and Industry following the recommendations of the Advisory Committee. By law, the maximum period for the whole procedure is thirty-eight days. The privileges and exemptions granted take effect following a twenty-day delay starting from the date of publication of the grant in the official legal bulletin *Le Moniteur*.<sup>25</sup>

#### CAUSES FOR TERMINATION OF PRIVILEGES<sup>26</sup>

Customs and Fiscal benefits are terminated when:

- (a) The enterprise fails to begin operations within the period set by the Commerce Department, generally between one and two years after approval;
- (b) the exonerations are granted as a result of false information given about the importance or the nature of the enterprise;
- (c) the enterprise stops its operations for three months over a ten month period, except when the stoppage is caused by "force majeure;"
- (d) the enterprise is found guilty of fraud or abuses.

#### ARBITRATION AND RECOGNITION OF FOREIGN JUDGMENTS

Haiti has ratified the International Convention of Havana of 1928, thereby accepting the Bustamante Code that sets the preconditions for enforcement of awards made in foreign countries. Haitian authorities will enforce a foreign award provided that: The parties were competent or had sufficient capacity to enter into a compromise; the subject matter of the agreement was legal; the arbitrators have applied the proper laws; and the award made is not contrary to public policy. The Code of Civil Procedure permits arbitration in all matters which may be the subject of a compromise. All persons enjoying legal capacity, *and* citizens of foreign countries may be designated as arbitrators. The Code does not establish a procedure to designate the arbitrators.<sup>27</sup>

Foreign judgments will be enforced in Haiti, provided the decision: Was rendered by a court of competent jurisdiction; is valid and enforceable in the country of origin; and is in accord with public policy.<sup>28</sup> Judgments rendered in the member countries of the 1928 Convention of Havana<sup>29</sup> are granted orders of exequatur if they comply with the conditions set by the Bustamante Code.

#### LAND LAWS

Under the new Haitian land laws of 1975, foreign entrepreneurs can purchase certain designated lands for investment and residence purposes.

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25. *Id.* art. 3.

26. *Id.* arts. 24-29.

27. *Supra* note 10, arts. 956 *et seq.*

28. *Id.* arts. 16 and 1890.

29. Inter-American Convention of Havana of February 20, 1968, embracing the International Code of Private Law (Art. 423 *et seq.*)

All corporations are afforded the same rights to land ownership as Haitian citizens.<sup>30</sup>

### CONCLUSION

It can be said that the manufacturing, assembly and construction industries are the only real dynamic sectors of Haiti's economy. These have been growing at impressive rates since 1971. Manufacturing now accounts for thirteen percent of domestic production and has been growing by eight percent per year since 1971. Industry now accounts for only twelve percent of the labor force.

In 1974, Haitian exports of products manufactured from imported materials amounted to \$61 million, and, in 1978, that figure should soar well over the \$100 million mark. These exports range from baseballs, belts, textile products and stuffed toys to electric motors, connectors, electric components and furniture. About one-third of the 230 plants processing and assembling imported components are owned by Americans.

The supply of low cost and tranquil labor, Haiti's proximity to the United States, good air and sea transport to U.S. markets, Haitian familiarity with U.S. products, long established distribution channels to the United States, and definite guidelines and incentives to foreign investments should continue to give Haiti a comparative advantage in all labor-intensive light manufacturing and assembly industries.

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30. *Supra* note 6, at 23.